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January 21, 2025

Heather Joy Baker, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of Joseph John Asterita**
Docket No. DRB 24-246
District Docket No. XIV-2023-0446E

Dear Ms. Baker:

The Disciplinary Review Board (the Board) has reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (the OAE) in the above matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board granted the motion and determined to impose a reprimand for respondent's violation of RPC 1.15(a) (eleven instances – engaging in negligent misappropriation of entrusted funds) and RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6).

According to the stipulation, on February 8 and April 27, 2023, the OAE conducted a random compliance audit of respondent's financial records. Following the random audit, the parties stipulated that respondent violated RPC 1.15(d) by committing numerous recordkeeping infractions, including (1) maintaining improper account designations on his attorney trust accounts (ATA)

and attorney business accounts (ABA),¹ as R. 1:21-6(a)(2) prohibits; (2) maintaining client ledger cards with at least \$232,475 in negative balances spanning eleven client matters, as RPC 1.15(a) prohibits; (3) failing to conduct monthly three-way reconciliations of his ATAs, as R. 1:21-6(c)(1)(H) requires; (4) maintaining one unresolved ATA check issued on September 7, 2022, as RPC 1.15(b) prohibits; (5) maintaining \$2,252.09 in “unidentifiable” ATA funds, as R. 1:21-6(c)(1)(B) prohibits; (6) commingling personal funds with entrusted funds, as RPC 1.15(a) prohibits; (7) failing to maintain ATA records for seven years, as R. 1:21-6(c)(1) requires; and (8) failing to deposit earned legal fees in connection with New Jersey client matters in a New Jersey ABA, as R. 1:21-6(a)(2) requires.

Additionally, respondent admittedly violated RPC 1.15(a) by committing eleven distinct acts of negligent misappropriation, in amounts ranging from \$15 to \$140,000 and totaling \$232,475. His repeated invasions of entrusted funds spanned three-and-a-half years, from January 10, 2020 through June 22, 2023; occurred in connection with eleven client matters, each involving real estate transactions; and invaded the entrusted funds belonging to dozens of clients and third parties.

Respondent’s negligent misappropriation resulted, in part, from his serious mathematical errors.

Specifically, in connection with his representation of Douglas and Ashley Tedesco concerning the sale of their personal residence, he failed to disburse the proper amount of net sale proceeds evenly between his clients. In that matter, on December 21, 2021, respondent’s paralegal sent his clients an e-mail requesting that they authorize respondent to disburse \$299,200.69 in net sale proceeds to each of them. However, as noted in the disciplinary stipulation, the \$299,200.69 amount reflected in the paralegal’s e-mail “was incorrect” because respondent held a total of only \$458,401.38 in his ATA for that transaction. Rather than ensure that his paralegal received authorization to disburse the correct amount to his clients, respondent approved the clearly erroneous

¹ Although respondent maintained ATAs and ABAs at multiple banks, his misconduct in this matter primarily involves his attorney accounts maintained at Northfield Bank. Accordingly, all references to “ABA” and “ATA” will refer to his Northfield Bank attorney accounts, unless otherwise specified.

\$598,401.38 disbursement calculated by his paralegal and, consequently, negligently invaded \$140,000 belonging to seventy-two clients and third parties. Respondent failed to detect his negligent misappropriation until the February 2023 random audit, following which, on June 22, 2023, he issued a \$140,000 ABA check for deposit in his ATA, thereby rectifying the account shortage

Similarly, respondent represented Michael Petrillo in connection with the sale of his personal residence. In that matter, in January 2021, respondent deposited, in his ATA, a \$5,000 check from the buyer towards the purchase of the property. On March 8, 2021, three days after the sale closing, respondent, with Petrillo's consent, issued an \$1,119.56 ATA check to the buyer representing a purchase credit. Thereafter, respondent disbursed \$4,880.44 in ATA funds to Petrillo, despite holding only \$3,880.44 in remaining funds in his ATA for that transaction. Respondent's careless mathematical error resulted in a \$1,000 negligent invasion of entrusted funds belonging to seventy-one clients and third parties. Following the February 2023 random audit, respondent recovered the \$1,000 in mistakenly transferred ATA funds from Petrillo and, thereafter, deposited those funds in his ATA.

Additionally, respondent represented Joseph Galante in connection with his purchase of real estate. In that matter, in September 2020, Galante issued a \$20,000 check to respondent towards the purchase of the property and, on September 29, 2020, respondent deposited Galante's check in his New York escrow account. Following the October 26, 2020 sale closing, respondent disbursed \$16,500 to the sellers from his ATA, rather than from his New York escrow account, where he had been safeguarding the funds. Two days later, on October 28, respondent issued a \$3,500 New York escrow account check to Galante. Respondent's conduct resulted in a \$16,500 negligent invasion of entrusted funds held for sixty clients and third parties in his ATA. Like his other instances of negligent misappropriation, he failed to discover his invasion of entrusted funds until the February 2023 random audit. Following that discovery, on March 7, 2023, he issued a \$16,500 New York escrow account check for deposit in his ATA and, thus, rectified that account shortage.

Moreover, in connection with his representation of Daniel Mahler and Ana Anselmi regarding the sales of their respective personal residences, respondent negligently misappropriated a total of \$7,125 in entrusted funds based on his mistaken belief that he was disbursing real estate deposits held in his ATA to their entitled parties. However, respondent, in fact, held no such funds in any of

his attorney accounts. Rather, in the Mahler client matter, the title company was holding the real estate deposit and, in the Anselmi client matter, counsel for the buyer was safeguarding such funds. Following the February 2023 random audit, respondent recovered a total of \$1,200 in mistakenly disbursed funds from his clients and replenished the remaining \$5,925 in misappropriated funds from his ABA.

Further, in connection with his representation of Marie and James McLean and Rebecca and James Talcott regarding the sales of their respective personal residences, respondent negligently misappropriated a total of \$295 in entrusted funds by transposing numbers or writing incorrect amounts on ATA checks issued to those clients. Following the random audit, respondent rectified his ATA shortage by utilizing ABA funds.

Additionally, in connection with his representation of Edward and Kathleen Marsh and Archie and Lelita Stoia regarding the sales of their respective personal residences, respondent negligently misappropriated a total of \$55 after his bank charged him fees following his failed attempt to initiate wire transfers in those matters. Following the random audit, respondent rectified those ATA shortages with ABA funds.

Finally, in connection with his representation of Gary and Pui Noon and Douglas and Gail Damiano concerning their respective real estate matters, respondent negligently misappropriated a total of \$67,500 following his failure to deposit checks issued by clients or title companies before disbursing those funds to their entitled parties. Following the random audit, respondent rectified those negative balances by arranging for a title company and a bank to re-issue the checks he previously had failed to deposit.

The parties stipulated that, by June 23, 2023, approximately four months after the initiation of the random audit, respondent had replenished all misappropriated funds and corrected all recordkeeping errors.

Generally, a reprimand is the appropriate discipline for negligent misappropriation caused by poor recordkeeping practices, even when accompanied by less serious infractions. See, e.g., In re Sherer, 250 N.J. 151 (2022) (as a consequence of poor recordkeeping, the attorney committed a single act of negligent misappropriation by issuing a \$36,097.03 ATA check to himself, thereby over-disbursing \$3,366.69 that he was required to hold,

inviolate, for eleven clients; additionally, for a two-week period, the attorney commingled \$8,747 in personal funds in his ATA; the attorney also failed to cooperate with the OAE's demand audit, and he failed to reimburse the clients impacted by his negligent misappropriation, resulting in harm to those parties; in mitigation, the attorney had no prior discipline in a thirty-six-year legal career and was no longer practicing law); In re Steinmetz, 251 N.J. 216 (2022) (the attorney committed numerous recordkeeping violations, negligently misappropriated more than \$60,000, and commingled personal funds in his ATA; he failed to correct his records; in mitigation, the attorney had no prior discipline in sixteen years at the bar, hired an accountant to assist with his records, and no clients were harmed by his misconduct); In re Osterbye, 243 N.J. 340 (2020) (the attorney's poor recordkeeping practices resulted in four distinct instances of negligent misappropriation, totaling \$4,552.53, belonging to clients and others in connection with real estate transactions; his inability to demonstrate to the OAE that had corrected his recordkeeping practices, despite multiple opportunities to do so, also violated RPC 8.1(b) (failing to cooperate with disciplinary authorities); the attorney also commingled \$225 in personal funds he received from his tenant; no prior discipline).

However, the quantum of discipline can be enhanced to a censure when additional aggravating factors are present. See In re Alsobrook, 258 N.J. 404 (2024) (as a result of poor recordkeeping, the attorney, for almost seven years, maintained ATA shortages in amounts ranging from \$15 to \$7,588; moreover, the \$7,588 ATA shortage spanned nearly a year-and-a-half and was rectified only after the OAE's intervention following a random audit; additionally, for almost three years, she commingled \$60,000 of personal funds in her ATA; further, for fifteen years, she failed to obtain the required professional liability insurance for her law firm, which she operated as a limited liability company; in aggravation, the attorney had a heightened awareness of her obligations to comply with the recordkeeping Rules and to safeguard client funds, considering her 2004 random audit for substantially similar infractions; the attorney, eventually, brought her records into compliance after retaining an accountant; prior remote censure for unrelated misconduct), and In re Rajan, 258 N.J. 354 (2024) (for more than three years, the attorney's ATA had a total shortage of \$124,211.53; the attorney's negligent misappropriation resulted, in part, by failing to monitor his ATA balance to ensure that checks issued by other signatories to that account were drawn on available funds; additionally, for many years, the attorney maintained more than \$150,000 in inactive balances underlying twenty client matters; some of the inactive balances represented

unidentifiable funds dating back as far as the 1990's; in aggravation, the attorney had a heightened awareness of his recordkeeping obligations based upon his prior random audit; no prior discipline).

Here, the Board observed that, like the reprimanded attorney in Sherer, whose poor recordkeeping practices resulted in negligent misappropriation, respondent's failure to comply with the recordkeeping Rules resulted in repeated and significant invasions of entrusted funds. However, unlike Sherer, whose single act of negligent misappropriation invaded only \$3,366.69 in ATA funds, respondent, during a span of three-and-a-half years, committed eleven acts of negligent misappropriation, thereby invading a total of \$232,475 in entrusted funds that he was obligated to hold, inviolate, on behalf of dozens of clients and third parties.

In the Board's view, respondent's serious and repeated acts of negligent misappropriation, when viewed in their totality, demonstrate an alarming pattern of recklessness towards his obligations to safeguard entrusted funds. Compounding his misconduct, he failed to detect his numerous instances of negligent misappropriation until the OAE's intervention underlying its February 2023 random audit.

However, unlike Sherer, who took no action to reimburse the eleven clients impacted by his \$3,366.69 negligent misappropriation, respondent, following the random audit, took relatively prompt action to replenish his negligently misappropriated funds. Specifically, where appropriate, respondent contacted the clients or title companies to recover the misappropriated funds. Moreover, in the Anselmi and Tedesco client matters, where he could not readily recover the excessive sums disbursed to his clients, respondent utilized his own funds to replenish his ATA. Indeed, it appears that respondent used at least \$146,248 of his ABA funds to rectify his negligent misappropriation.

By June 2023, approximately four months after the initiation of the OAE random audit, respondent had replenished all negligently misappropriated funds. In contrast to the clients in Sherer, who were harmed by that attorney's refusal to provide them with their negligently misappropriated funds, respondent's conduct, fortunately, did not appear to result in any ultimate financial harm to his clients or third parties.

Further, in contrast to reprimanded attorney in Osterbye, who neither cooperated in the OAE's financial audit nor demonstrated to the OAE that he had corrected his recordkeeping practices, the Board observed that respondent appropriately cooperated with the OAE and, by June 2023, corrected all recordkeeping errors. Moreover, in the Board's view, respondent appears to have taken appropriate measures to prevent future recordkeeping errors and negligent misappropriation. Specifically, respondent (1) updated his accounting software to allow him to perform proper ATA reconciliations; (2) retained a forensic accountant to assist him in reconciling his ATAs; (3) attended a continuing legal education course in trust account management; and (4) notified the OAE that, going forward, he would not hold funds for real estate transactions in his ATAs.

Finally, unlike the censured attorneys in Alsobrook and Rajan, who had a heightened awareness of their obligations to comply with the recordkeeping Rules and to safeguard client funds, given their prior random audits for similar infractions, respondent, who was not the subject of a prior financial audit, arguably, was not on heightened notice of the inadequacies of his firm's recordkeeping practices. Specifically, respondent's 2023 reprimand in In re Asterita, 254 N.J. 51 (2023), for engaging in imputed conflicts of interests – spanning from 2004 through 2012 – at the direction of his former managing partner, involved completely unrelated misconduct. Indeed, prior to the “abrupt” resignation of his former managing partner, in July 2021, respondent had not been responsible for ensuring that the firm's recordkeeping practices complied with the applicable Court Rules.

Consistent with disciplinary precedent, although the Board found that a censure is supportable based on respondent's repeated acts of negligent misappropriation which, for years, invaded substantial sums of entrusted funds, the Board determined that a reprimand is the appropriate quantum of discipline, considering the apparent lack of any ultimate financial harm to clients or third parties, respondent's replenishment of his ATA shortages (utilizing \$146,248 of his own funds) within four months of the random audit, and the preventive measures he adopted to avoid future recordkeeping errors and negligent misappropriation.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated October 11, 2024.

2. Stipulation of discipline by consent, dated October 11, 2024.
3. Affidavit of consent, dated October 9, 2024.
4. Respondent's counsel's letter to the Board, dated October 22, 2024.
5. Ethics history, dated January 21, 2025.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel

TME/akg
Enclosures

c: See attached list.

(w/o enclosures)

Hon. Mary Catherine Cuff, P.J.A.D. (Ret.), Chair

Disciplinary Review Board (e-mail)

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